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A STATEMENT OF THE TRUST PROBLEM.[1]

A PROBLEM is easier of solution after it has been reduced to its lowest terms. The questions whether anything is to be done about the trusts, and if so what, may fairly be said to form the vital problem of the day. Until the word in its new meaning acquires that good usage in the realms of law which it has attained in popular discussion, a trust cannot be accurately defined. For convenience, however, we may describe a trust as a corporation representing the combination of previously independent interests and controlling over fifty per cent of the trade of a particular industry. To state the trust problem in what to the writer appears to be its approximately lowest terms is the endeavor of this paper.

There was no question in regard to trusts in the year 1800; there was no such question twenty years ago. If there is a trust problem to-day, it must be because certain definite facts exist now which did not exist a comparatively few years ago. What has happened to create the trust problem? This query opens for discussion a field vast and of indefinite limits. Any great movement, religious, political, or economic, is invariably obscured in the eyes of those who see its actual progress by accompanying manifestations not really germane to the movement itself. In trying to discover what has happened to create the trust problem, clearness requires that certain of such manifestations be mentioned. If

[1] The evidence on which this paper is chiefly based may be found in the Report of the Industrial Commission created by act of Congress, approved June 18, 1898, vols. i., xiii., and xix.

many more are omitted it is because in dealing with so vast a subject we can hope to arrive at any end only by a resolute process of elimination. Thackeray's picture of Ludovicus Rex represents a figure six feet high, "majestic, imperial, and heroic." But in the picture of Ludovicus, when "the wig, the high-heeled shoes and cloak all fleur-de-lis bespangled" are taken away, we have a "little, lean, shrivelled, paunchy old man of five feet two." With much diffidence and it is hoped a proper regard for modesty, the writer has tried to apply this undressing process to the trust problem.

In the early history of this country business combinations took the form of partnerships. Not till the middle of the nineteenth century did the practice of combining to do business in the form of a corporation begin on any considerable scale. The next step was the combination of the interests of individual corporations. Railroads were the first to put the idea into practice, and then, the several interests which now form the Standard Oil Company. Within the last ten years combinations have been made of corporations engaged in nearly every industry carried on in this country. To furnish a standard for comparison the following figures are given. The total wealth of the United States according to provisional figures of the census of 1900 is $90,000,000,000. The sum total of the railroad securities of the United States at par in 1900 was $12,500,000,000.[1] In the Stock Exchange handbook for 1902 statistics are given of five hundred industrial corporations which represent the combination of previously existing independent interests. The securities of these five hundred industrial corporations actually issued are: bonds, $1,327,941,111; preferred stock, $1,833,899,251; common stock, $4,318,616,061; total, $7,480,460,423. These facts have created the trust problem.

To ascertain precisely what has been going on, it is necessary to follow back the history of these existing combinations. The story of the development of the movement of which these facts are the result must, however, within the limits of a short article, be told in general terms. The principle of combination has been the vital thing. This principle twenty years ago took form in the creation of the real trust. Here the several properties intended to be combined were transferred to individuals as trustees, who issued certificates of beneficial interest. These individuals managed the

[1] Report of Industrial Commission, xix. 261.

business of the several combined properties, paying dividends on the certificates issued. Real trusts were not easily handled by the parties interested and were held to be illegal.[1] They are practically non-existent at present.[2]

Another form developed by the combination idea, second in point of importance, but probably prior in point of time, was the pool. Here several concerns engaged in a similar business agreed to regulate the selling price of the commodity produced; to divide the territory of the country among themselves; and generally to establish a community of interest. The pool was a looser form of combination than the real trust. The corporations forming it were not bound closely together in legal point of view; difficulty was sometimes found in holding the members up to their agreements, which were almost always of an informal nature. Further, pools are illegal,[3] though the extreme difficulty of securing evidence of the facts which make them pools has undoubtedly allowed many to flourish free from legal attack. With the incorporation of the Beef Trust pools too will become practically non-existent.

The third form which the combination idea took was the corporation. There is a radical, a fundamental difference between this form and the two preceding ones. Real trusts and pools are composed of the constituent corporations; the combining corporation *is* the constituent corporations. To give an analogous example, before the adoption of our Constitution there was a federation, a combination of states; after its adoption there was a nation which is the United States. Thus the corporation formed to combine various interests is a legal entity, a thing of and by itself. As far as results and effects go, it is a combination. In fact the corporation is the vehicle in which practically all the great combinations travel to-day.[4] We have arrived, then, as far as this: the desire for combination is the motive which creates the trust; the corporation is the form it takes.

Why have the formerly independent parts of the trust combined in any form? What is the basis of this desire for combination? Properly to answer these questions something by way of exclusion is at once necessary. We will limit the answer to the fundamental reasons; the reasons, of which as a natural development the com-

[1] People *v.* The North River Sugar Refining Co., 121 N. Y. 512.
[2] Report of Industrial Commission, xix. 607.
[3] United States *v.* Addyston Pipe & Steel Co., 175 U. S. 211.
[4] Report of Industrial Commission, xiii. 6.

bination is the rational result. Further, in the first instance, we will exclude from our discussion the desire to put an end to competition. With these limitations the reasons why several corporations combine are as follows. The combination will have certain advantages which the individual corporations cannot possess.[1]

1. Opportunity for comparative administration and accounting among the several corporations merged.[2]

2. Ability to buy in large quantities and therefore cheaply.

3. More perfect organization.[3] This includes saving in salaries of higher officials. Where before there were paid vice-presidents and superintendents for each plant, there need now be only one superintendent and one set of higher officials for a district.

4. Ability to handle large orders.

5. Ability to sell in large quantities, and therefore at a smaller percentage of profit.

6. Ability to save charges of transportation by shipping from the plant nearest in location to the consumer.[4]

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[1] Report of Industrial Commission, xii. 6. "The Trusts," W. M. Collier, p. 61.

[2] Testimony of E. H. Gary, now Chairman of Direction of U. S. Steel Corporation, before the Industrial Commission. "For instance I do not care what plant one goes into, there are beneficial features in that plant that are not in other plants." Report of Industrial Commission, i. 985.

Testimony of Charles S. Guthrie, President of the American Steel Hoop Company. "Then we have the benefit of the good work of one mill to compare with that of another. If one mill makes 12 inch stuff, 10 or 9 inch stuff, different sizes, and gets out 60 tons and another 40, we can say to the one that got out 40, 'What is the trouble, this other mill gets out 60?'" Ibid. i. 953.

[3] Testimony of Charles M. Schwab before the Industrial Commission. "The steel-making industry is peculiar in this, that no matter how small the operations are, there are skilled men in each line necessary. If a firm has two furnaces or fifty furnaces, they can't do without one skilled man in each of their lines, as a skilled melter, skilled superintendent, skilled chemist, skilled draftsman, and so on down the line. Now, we can consolidate all these industries, we can have one selling man, for example; one chief chemist, one chief engineer, that will answer all purposes for all these works by adopting the same method at each of the works." Ibid. xiii. 451.

[4] Testimony of Archibald S. White, President of the National Salt Company, before the Industrial Commission. "All salt sold is delivered at point of consumption, not at point of production. Of that delivered, from 30% to 60% of the price constitutes freight; therefore each producing section should naturally supply the territory contiguous thereto. This was not always the case, however, as salt manufactures in some localities were not acceptable in quality to purchasers. As a result, salt was shipped to distant and unnatural markets, paying freight thereon equal and sometimes exceeding the value of the salt at the point of production. Reforms have been made by producing a uniform quality of salt of a standard grade of manufacture in each of the producing districts, and an economy has been effected by supplying markets from the nearest point of production at the lowest prevailing freight rate." Ibid. xiii. 253.

7. Ability to utilize waste.
8. Opportunity for experimentation.
9. Ability to specialize labor.

These reasons for combining may be also described as the economic benefits of combination. In later parts of this paper this designation will be used to refer to them. They are the gist of the combination idea; the inherent, inevitable incidents of the abstract fact of combination. They may be loosely summed up by the phrase, "In union there is strength."[1]

The desire to put an end to competition was excluded. It is not of the essence of the abstract principle of combination. Praccally it is the cause of all others which has led to the formation of combinations.[2] Why does the desire to end competition exist? Let us, in the first instance, limit our answer to reasons which rest on a sound economic basis. Besides lacking the economic benefits of combination, competing enterprises labor under certain more evident disadvantages. Each is bound to secure trade. Effort in this direction leads to large expenditures for advertising, to employment of a great number of traveling salesmen, and to cutting of prices. This tends to reduce the profits of the competing concerns to a minimum; sometimes it results in no profit at all, and occasionally in actual loss. The two causes of competition are found in fundamental traits of human nature: First, on the part of the consumer, the desire to buy at the cheapest possible price; second, on the part of the producer, the wish to increase the volume of his business. If the competitors join forces, form a combination, they will remove this pressure of competition. The combination which puts an end to competition gains the following economic advantages:

1. It can dispense with many traveling salesmen.[3]
2. Its expenditures for advertising will be less. Twenty soap manufacturers to advertise their goods must take twenty pages of a

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[1] Testimony of John D. Rockefeller, President of the Standard Oil Company, before the Industrial Commission. "Much that one man cannot do alone two can do together, and once admit the fact that co-operation, or, what is the same thing, combination, is necessary on a small scale, the limit depends solely on the necessities of the business." Report of Industrial Commission, i. 796.

[2] Ibid., Summary of Conclusion, i. 9, xiii. 5.

[3] Testimony of Charles R. Flint, Treasurer of the United States Rubber Company.
"Q. Can you give us any more definite data with reference to the number of traveling men whose services have been dispensed with in the United States Rubber Company?
"A. There has been a saving of 25%." Ibid. xiii. 35.

magazine; the combination can advertise its various brands on one or two pages of the magazines; it can also make better rates.[1]

3. It is in a stronger position to regulate credits.[2] Eagerness to do business renders competing concerns careless and sometimes deliberately venturesome in selling goods on credit. The combination is freer to be discreet in the matter of credits, and its percentage of bad debts is much smaller than was the percentage of bad debts of the constituent companies.

4. It can regulate production.[3] The combination controlling, we will say, eighty per cent of the trade in a particular industry, can estimate the demand for the products of that industry, and make the supply correspond. Overproduction leads to panics, and subsequently to business depression and stagnation. To make the supply equal the demand tends to promote even conditions in trade, steady employment of labor, and in general to secure a rational calm in business circles.[4]

These advantages of the combination may be summed up as a saving of the wastes of competition. In later parts of this paper this designation will be used to refer to them.

We have thus far given only those reasons for desiring to end competition which rest on a sound economic basis. There is, however, another reason for wishing to end competition, namely, the desire to create a practical monopoly. The combination which becomes a practical monopoly has, from its own point of view, the following advantages. It has the power to control the situation, to dictate terms to the laborer, and to fix rates for the consumer. In later parts of this paper this power will be designated monopoly control. There is no question that many of the great combinations have been formed with precisely this intent and purpose.[5] To sum up, as far as we have gone, the fundamental

[1] Report of Industrial Commission, xix. 611.

[2] Testimony of John W. Gates, President of the American Steel and Wire Company, before the Industrial Commission. "If a man does not pay according to terms, we are a little more strict with him." Ibid. i. 1030. And testimony of Charles R. Flint, Treasurer of the United States Rubber Company. Ibid. xiii. 36.

[3] Ibid., Summary of Conclusions, xiii. 6.

[4] Collier on Trusts, p. 63.

[5] Testimony of John W. Gates before the Industrial Commission.

"Q. What are the chief causes of the formation of your Company? Was it this same competition?

"A. It was because we wanted to be the wire manufacturers of the world." Report of Industrial Commission, i. 103.

Testimony of H. O. Havemeyer, President of the American Sugar Refining Company, before the Industrial Commission.

reasons why combinations are made are, (1) to secure the economic benefits of the fact of combination, (2) to save the wastes of competition, (3) to create a practical monopoly.

There are certain spurious reasons why combinations are made which may be better understood after some account of the manner in which combinations are brought into being. In the first place, the combination is in form a corporation. This corporation either owns the plants, the actual property of the constituent companies, or all the stock of the constituent companies which themselves continue to exist. The making or promotion of the combination may be illustrated as follows.[1] Suppose there are fifty biscuit factories in operation in different parts of the country. The promoter organizes a corporation, probably in New Jersey, for the purpose of taking over these fifty factories. He then secures upon the various plants an option to purchase them either for cash or for stock of the new corporation. Some may be willing to sell out for stock, some may insist upon cash. When cash is required, the promoter makes a trade with some banker or financiering syndicate, by which the banker agrees to furnish the cash for the purchase of some of the plants, and in return he is to receive stock of the new corporation. The promoter is given the entire stock of the new corporation to buy the plants and to pay expenses, retaining the balance for himself. Suppose, then, he is given $100,000,000 of preferred stock and $100,000,000 of common stock. Thirty-five of the plants he desires are willing to take stock, and for this purpose he uses $75,000,000 of the preferred stock and $50,000,000 of the common. The other fifteen refuse to sell except for cash. The promoter makes his trade with the banker, who furnishes him $24,000,000 in cash in return for $24,000,000 of the preferred and $24,000,000 of the common stock. The lawyers' fees, advertising, and incidental expenses amount to $1,000,000, which the banker advances in return for $1,000,000 preferred and $1,000,000 common stock.[2] These various agreements are made at different times,

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"Q. Do I gather from your remarks that you think it is a pretty good idea for all competitors to be knocked out but the one that controls the business?

"A. That is trade, and you cannot alter it, and the Federal Government cannot alter it, and the sooner you realize it and stop the talk about it the better off the country will be in that respect." Report of Industrial Commission, i. 116.

[1] The American Chicle Co. (chewing-gum trust) was formed in this way. Testimony of C. R. Flint before the Industrial Commission. Ibid. xiii. 51.

[2] Usually the promoter is required to furnish also a certain amount of cash as working capital for the new corporation.

but frequently the whole matter is brought to a culmination at one and the same time and place. Supposing the preferred stock to be worth par, the banker has profited to the extent of $25,000,000 in common stock; the promoter also has pocketed $25,000,000 of common stock by the transaction. Not infrequently the promoter and banker are the same individual. This illustrates one method, but a fairly typical one, by which combinations are made. Sometimes only so much stock is issued as is needed to purchase the desired plants, and the promoter is given an amount of stock equal to five per cent of the issue.[1] Nearly all the methods employed, however, involve a large profit to the promoter and the financier.[2] This indicates a further reason, not hitherto considered, why combinations are made, namely, the opportunity afforded to the promoter and the financier to make great profits. Unquestionably many combinations have been instigated chiefly to accomplish this end.

The illustration of the method by which combinations are formed suggests what might be called another reason why combinations are made, but which may be better described as a usual incident to their formation. The promoter, we find, buys the various plants for cash or for stock in the new corporation. How much does he pay for them? If competition has been causing the various plants to run at a loss, the prospect of avoiding this competition held out by the proposed combination is certainly alluring to the owners of the various plants. Even here, however, there is a perhaps unreasoned fear that the proposed benefits may not materialize, and a disinclination to merge individual identity. There is the desire to sell out at the highest possible price. When the combination is of several successful companies, there is naturally a determination to secure a large profit by the sale. The acquisition of at least the important companies is necessary to the scheme of combination. The result is that the owners of the various plants receive a very high price if they sell for cash; a large bonus of stock if they sell for stock. It must be recognized that the constituent companies are often of much greater intrinsic value than is represented by the amount of money it would take to duplicate their plants. The fact that a business is going and established — its good-will, to use a loose but descriptive term — is often a more valuable commercial

[1] This was the method in the case of the United States Rubber Company. Report of Industrial Commission, xiii. 8.

[2] Ibid. i. 15.

asset than its whole tangible property. Even so, the price in cash or stock at which the constituent company sells out to the trust is generally largely in excess of the value of the constituent company, even reckoned on the basis of its earning capacity.[1]

The initial cost of the combination over and above the sum of the values of its constituent parts must be a considerable amount. It is made up as follows: the excess, above value based on earning capacity, paid owners of the companies merged, plus the banker's profits, plus the promoter's profits, plus lawyers' fees, advertising, and incidental expenses. This can mean only one thing. Judged by the capitalization of the constituent companies, even when that is based on earning capacity, the combination is largely overcapitalized. Its securities at par on their face stand for a much greater value than the value of the constituent companies as such.[2] Whether the face value of the securities of the combination represents more than the value of the assets of constituent companies plus the fact that these assets are held and managed by the combination, — whether, in other words, the combination judged by its own earning capacity is overcapitalized, — is a different question. We have found that there is true value, a commercial asset, in the fact of combination. Further, we have separated this value into the following parts: (1) Economic benefits of combination; (2) Saving the wastes of competition; (3) Monopoly control. The value of all or perhaps any one of these as a basis for capitalization may exceed the excessive initial cost of forming the combination. If it does, the combination, judged by its own earning capacity and only from its own point of view, is not overcapitalized.

The combination must be scrutinized, however, from other points of view than its own. The character of a combination, that is, the values which make up the basis of its organization, is determined by the reasons which led to its formation. In actual fact all these reasons in greater or less degree unite to cause the formation of combinations. All combinations are complex in character. We cannot say that one is founded entirely on the economic benefits of combination, another entirely on the saving of the wastes of competition, a third wholly on monopoly control. Such hard

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[1] Report of Industrial Commission, i. 14.

[2] The total securities of the United States Steel Corporation are more than the total securities of its constituent companies by over four hundred and fifty million dollars.

and fast lines cannot be drawn around real combinations. For purposes of discussion, however, we may separate this complex character into distinct divisions. Further, let us assume that capitalization is a true standard of measurement. Suppose there are one hundred steel companies in active operation in the United States. (1) Fifty of these companies combine in a large corporation, capitalized for $100,000,000. Of this $60,000,000 represents the value of the constituent companies based on the earning capacity, and $40,000,000 the value of the economic benefits of combination. This corporation will be able to pay fair dividends on its capitalization without either raising the selling price of its products or reducing the wages of its laborers. It can do this because it is founded on real value, namely, the economic benefits of combination. (2) Suppose, instead of fifty, seventy-five of these steel companies combine in a large corporation capitalized for $220,000,000. Of this $120,000,000 represents the value of the constituent companies based on earning capacity; $80,000,000 the value of the economic benefits of combination, and $20,000,000 the saving of the wastes of competition. So long as the wastes of competition are saved, this corporation will be able to pay fair dividends on its capitalization without either raising the selling price of its products or reducing the wages of its laborers. It can do this because it is founded on true value, namely, the economic benefits of combination plus the saving of the wastes of competition. (3) Suppose, instead of fifty or seventy-five, ninety-five of these steel companies combine in a large corporation capitalized for $440,000,000. Of this $160,000,000 represents the value of the constituent companies based on earning capacity; $120,000,000 the value of the economic benefits of combination; $60,000,000 the saving of the wastes of competition; $100,000,000 monopoly control. To pay dividends on the $100,000,000 representing monopoly control, this combination must lower wages or raise prices. It must do this because this part of its capital is founded not on true value, but on the fact that the combination is a practical monopoly.

In the difference between the first two combinations and the last, in the opinion of the writer, lies the trust problem. Let us assume in each example suggested that the combination embraces all the corporations engaged in a particular industry; that each combination controls the entire business of the country in this industry; that the only difference lies in the basis on which each is founded.

Competition has been entirely cut off in each case. Potential competition — that is, competition which will come into existence when alien capital sees opportunity for profitable investment — remains. When will this competition in fact arise? In other words, when will capital see opportunity for profitable investment? In the case of the first two combinations, never. The first two combinations are making a fair return on actual values which they possess. New capital will have neither the economic benefits of combination nor the saving of the wastes of competition. It cannot with a fair return to itself furnish products to the public at a lower price than that fixed by these two combinations; in other words, it cannot compete. In the case of the third combination, at once. This combination makes a profit not because of a true economic value, but simply because it may do as it pleases. This fact is an invitation to new capital sure to be accepted. The new competition will not require a return on $100,000,000 of wholly fictitious value; in other words, it can compete. This fact renders the situation of the third combination constantly precarious and sometimes desperate. When the new competition is started, the combination is no longer a practical monopoly. It has lost that part of its value which we have called monopoly control, represented by $100,000,000. Founded and maintained on the basis of monopoly control, it must prevent all competition or become a financial wreck. In fighting competition this combination fights for its very life; there is no choice about the matter; it must oppose competition at all hazards, must, if possible, crush it out as soon as it shows its head.

In the opinion of the writer, public interest does not require that competition should arise in the case of a combination founded and maintained on the economic benefits of combination and the saving of the wastes of competition. This combination has not raised prices, has not lowered wages. No one is poorer or in a less favorable position because of its existence. The worst that can be said is that every one is not better off. New values created from an idea have come into existence and certain persons have profited by them; in the case imagined, it is the promoter, the banker, and the owners of the constituent plants. If labor has so organized that it can successfully demand a share in these new values, it too has profited. The consumer has not. This, however, is dealing theoretically with the question to the last degree.

In actual fact, a combination of all the corporations engaged in a particular industry never takes place. In the example first given, for instance, where fifty corporations combined, the other fifty or some part of them may combine, securing also the economic benefits of combination. One or the other of these combinations, instead of paying immense profits to promoters and financiers, and so being obliged fully to capitalize the new value lying in the fact of combination, may permit this value, in part at least, to result in a lower selling price to the consumer. The combination doing this can and will undersell the one that does not. It will therefore secure the majority of trade and tend to secure the entire trade. Thus, in fact, the economic benefits of combination and the saving of the wastes of competition which come into existence through this idea of consolidation tend logically to result in a lower price to the consumer. He, too, will share in the new values. This is the ideal condition which all combinations should reach. If potential competition were efficient, the real condition would approach closely to the ideal. Unquestionably, however, potential competition is not efficient in actual practice. Stated in a broad way, the solution of the trust problem lies in making potential competition as effective in fact as it is in theory. What is needed to accomplish this?

First, alien capital must know all the facts, must see the organization, operations, and profits of the combination with the same distinctness with which it has been assumed to see them in the illustrations of this paper. Nothing in the nature of things makes this impossible or even difficult.

Second, means must be devised to counteract the fact that in the nature of things potential competition cannot instantaneously become actual competition. It must be recognized that even with abundant capital one cannot erect a steel manufacturing plant or a sugar refinery until considerable time has elapsed. It must also be recognized that this delay, besides involving possible changes in the conditions of trade, affords precisely the opportunity to those in control of the practical monopoly to yield to that instinct pretty generally rooted in imperfect human nature, — to make a lot of money now, and be good ever after. Further, strikes and other incidents for which those in control of the practical monopoly may not be directly responsible are likely to work public discomfort. To indicate methods for reaching results is not within the scope of this mere statement of the trust problem. Govern-

ment inspection and supervision, as covering the point under consideration, is suggested only by way of example.

Third, the combination must fight the new competition only by proper methods. This is not the case at present. Cut-throat competition flourishes; [1] it is said that freight and other discriminations still exist; the writer hazards the opinion that things are done by the combination for which its directors as individual citizens would hesitate to assume the responsibility.

If effort to improve existing conditions is concentrated on these three points, the writer believes the trust problem would assume a more definite aspect.

In this statement of the problem it seems proper to the writer briefly to indicate why the public may with perfect propriety take a hand in its solution. The existence of a combination founded and maintained on the basis of monopoly control does affect the public, — the consumer, because it raises prices; [2] the laborer, because it lowers wages, and because the laborer skilled in only one employment has nowhere else to turn. Whether it is the public's business to take a hand in the matter depends upon something further. Our laws are founded on the principle that there should be as wide freedom for the individual as is compatible with the safety and welfare of the whole community. Until recently, facts measured by this principle have justified the theory that the method of conducting one's business, provided it be legal, is

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[1] Testimony of Archibald S. White, President of the National Salt Company.

"Q. That is, where there is competition you sell low, and you recoup yourself off the general market?

"A. Certainly. And if we find it necessary we sell salt at less than cost.

"Q. Is that fair to the competitor, do you think?

"A. We are not looking out for his interests." Report of Industrial Commission, xiii. 262.

Testimony of H. O. Havemeyer.

"Q. Now, as regards this later drop in the margin, that was caused by what competition particularly?

"A. That is the new interlopers, the new refineries. What do you call them, these different refineries? There were half a dozen of them who began active operations, and threatened, if we left them to themselves, to displace our meltings to the extent of 50 per cent.

"Q. Your policy was, substantially, to put the price down so they would not find it profitable to remain in business?

"A. And to secure the continuation of the output of the American Sugar Refinery, which is very vital to it." Ibid. i. 108.

[2] Prices may be lowered in fact and at the same time raised in principle. Improved machinery, a wider market, and other conditions not springing from combination are excluded from consideration in this paper, but are of great practical importance.

one's own private affair; that it is none of the public's business. If by force of the existing movement towards consolidation the business of men or corporations may become so combined as to result in a practical monopoly, something which does affect the public, the facts have outgrown the theory. A change in degree, as is not unusual, effects a change in substance.

Regarded more narrowly, the right of the public to take a hand appears to be obvious; an exercise of the right would seem to be neither revolutionary nor radical. To what do trusts owe their existence? Practically all of them are now corporations. They have not been able to maintain a successful existence in any other form. Further, even in the case of the real trust and the pool, the constituent parts of the combination were themselves corporations and were so of necessity. The recognized advantages of the corporate form of doing business are principally three:[1] (1) Many persons are able to act as a single legal entity. (2) The liability of the owners of the business, that is, the stockholders, is limited in amount. (3) The legal entity has continuous existence. Less obvious advantages, but flowing from these, are (1) the ability to raise a large capital because of the fact that the investor's liability is limited, and because of the convenience with which evidence of ownership, that is, stock certificates, may be issued and subsequently transferred; (2) and efficient management, because, while many contribute to the financial strength of the enterprise, the actual management is left in the hands of the few, — presumably the few most capable, namely, the directors. The only known way in which these advantages can be secured is through the corporation. Without these advantages it is impossible for the trust to exist.

Where does the corporation come from? Is it, like life, liberty, and the pursuit of happiness, something to which men are born and to which they have an inalienable right? Corporations in this country exist only by permission of the legislatures of the

[1] "The great distinctive feature of a corporation is, that it is authorized by a law or grant to act as an artificial being, the several members of which constitute one person in law, and have but a single will." Hand, Senator, in Gifford *v.* Livingston, 2 Davis (N. Y.) 395.

"The corporation is a protection in that the liability is limited; it is capable in that it renders possible the collection of a great capital; it is efficient because the directors, and they alone, govern its policy and its contracts; and it is convenient because it is easy to sell or buy or pledge or bequeath one's interest in the concern." Cook on the Law of Corporations, p. 3.

various states, — by sanction of the public, acting through its chosen representatives.[1] This fact seems sometimes to be imperfectly recognized.[2] Permission of the sovereignty is the absolutely essential requirement to bring a corporation into being; and this has always been true from the very earliest times. There is not and never has been a business corporation at common law.[3] Further than this, the first corporations were formed for the purpose of carrying on some enterprise directly for the public. The learned author of "The History of the Law of Business Corporation before 1800" has said in these columns, in speaking of English corporations in the year 1692: "But the corporation was far from being regarded as simply an organization for the mere convenient prosecution of business. It was looked on as a public agency."[4]

The public created corporations for its own good; for its own good it may limit their functions or regulate their powers. The public must act by legislation. Because there is true economic value in the movement which has resulted in trusts, this legislation should not go beyond the point of making potential competition efficient.

Robert L. Raymond.

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[1] "A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality, and, if the expression may be allowed, individuality, — properties by which a perpetual succession of many persons are considered as the same, and may act as a single individual." Marshall, C. J., in Dartmouth College *v.* Woodward, 4 Wheat. 636.

[2] Testimony of H. O. Havemeyer before the Industrial Commission. "It is my opinion that corporations are under no obligations whatever to any of the States for their existence. Quite the reverse. The States are under obligations to them." Report of Industrial Commission, i. 103.

[3] Williston on History of Law of Business Corporations before 1800. 2 HARV. L. REV. 112.

[4] 2 HARV. L. REV. 110.